



**Order 97-05-11**

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 15<sup>th</sup> day of May, 1997

**Served: May 21, 1997**

Applications of

**HEAVYLIFT-VOLGADNEPR LTD.**

for exemptions under 49 U.S.C. section 40109(g)

Dockets **OST-97-2093**  
**OST-97-2124**

**ORDER CONFIRMING EXEMPTIONS**

**Summary**

This order confirms our oral actions of January 30, and February 21, 1997, granting Heavylift-VolgaDnepr Ltd. exemption authority to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized satellites and related equipment.

**Applications**

On January 24, 1997, Heavylift-VolgaDnepr requested an exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Oakland, CA, and Cape Canaveral, FL, using its AN-124 aircraft on or about February 5, 1997. The flight was to transport one outsized satellite and related equipment on behalf of Space Systems Loral. The applicant stated that Loral had contracted to manufacture and launch a spacecraft satellite from Cape Canaveral, and that its contractual requirements and reserved launch date required the spacecraft to be in place in Florida on February 5. It stated that unanticipated production problems over the past two months and the need to replace hydraulic pumps in the final stages of manufacture delayed production of the satellite and eliminated the use of surface transportation

for its timely arrival. It stated that Loral urgently required air transportation to meet its obligations and launch deadlines at Cape Canaveral, and that delay in the delivery of the satellite would postpone its launch and result in hardship to the company.

On February 11, 1997, Heavylift-VolgaDnepr applied for requisite exemption authority to operate one one-way cargo charter flight between Philadelphia, PA, and Moffett Field, CA (or Oakland International Airport as an alternate) on or about February 24, 1997, using its AN-124 aircraft to transport one outsized telecommunications satellite and related equipment on behalf of Lockheed Martin Astro Space. The applicant stated that production of the satellite was behind schedule, the New Jersey plant where the satellite was under construction was closing as a result of the recent Lockheed-Martin Marietta merger, and the company had decided to complete the satellite's construction at the Lockheed Martin plant in California to eliminate further delays. It stated that in order to complete production on time to meet the scheduled launch date, the unfinished satellite had to be transported to the California plant by air. It also stated that surface transportation would compromise safety because of the delicacy of the satellite and its instrumentation, its high value, and unique nature.

In each case, Heavylift-VolgaDnepr stated that, because of the size of the satellites, transportation on U.S.-carrier aircraft was not possible, and attached to its applications statements from Space Systems Loral and Lockheed Martin Astro Space confirming their characterization of the situations and supporting its requests.

### **Answers**

Heavylift-VolgaDnepr served its applications on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

### **Statutory Standards**

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, is not relevant here).<sup>1</sup>

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<sup>1</sup> For examples of earlier grants of authority of this type, see Orders 97-2-24 and 95-11-35.

## Decision

On January 30 and February 21, 1997, we orally granted Heavylift-VolgaDnepr's requests to conduct its proposed emergency cabotage flights. We confirm those actions here. We found that the applications met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest.<sup>2</sup>

We were persuaded that the unforeseen technical and production problems encountered by Space Systems Loral and Lockheed Martin Astro Space during the manufacture of the satellites, their need to move the satellites promptly in order to meet delivery and launch deadlines, the fact that the satellites could not be transported by surface in time to meet those deadlines, and the potential negative impact of a delay constituted an emergency not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Heavylift-VolgaDnepr's requests would prevent undue hardship to Space Systems Loral and Lockheed Martin Astro Space.

In view of the above, we found that immediate action on these applications was required; that our actions met the relevant criteria of 49 U.S.C. 40109(g) and were required in the public interest; and that our actions did not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

## ACCORDINGLY,

1. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of January 30, 1997, granting Heavylift-VolgaDnepr Ltd., authority to operate one one-way emergency cabotage flight between Oakland, CA, and Cape Canaveral, FL, on or about February 5, 1997, to transport one outsized satellite and related equipment on behalf of Space Systems Loral;
2. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of February 21, 1997, granting Heavylift-VolgaDnepr Ltd., authority to operate one one-way emergency cabotage flight between Philadelphia, PA, and Moffett Field, CA (or Oakland International Airport) on or about February 24, 1997, to transport one outsized telecommunications satellite and related equipment on behalf of Lockheed Martin Astro Space;
3. In the conduct of the authorized operations, we required Heavylift-VolgaDnepr to comply with the conditions of Appendix A, and with an FAA-approved flight routing;
4. We will serve this order on Heavylift-VolgaDnepr Ltd. and the Federal Aviation Administration (AFS-200).

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<sup>2</sup> We also found Heavylift-VolgaDnepr qualified to perform the operations at issue here. We have previously found the carrier qualified to conduct charter operations using its AN-124 aircraft ( *see, e.g.,* Order 93-10-19).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

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